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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,982	06/23/2006	Davide Zampini	MBZ-0521	3511
23575 7590 08/22/2008 CURATOLO SIDOTI CO., LPA 24500 CENTER RIDGE ROAD, SUITE 280 CLEVELAND, OH 44145				
EXAMINER				
OJURONGBE, OLATUNDE S				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
08/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/551,982

Applicant(s)

ZAMPINI ET AL.

Examiner

OLATUNDE S. OJURONGBE

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF 298)
Paper No(s)/Mail Date 20051004
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:
Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

Specification

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1, 6-7, 8-10, 14-16 and 18** are rejected under 35 U.S.C. 102(b) as being anticipated by Melbye (EP0641746), the US patent (US 5,674,929) is used for ease of citation.

Regarding **claims 1 and 6-7**, Melbye teaches an admixture for use in a cementitious composition which comprises at least one waterproofing agent and at least one water retention agent (col.1, lines 36-39); Melbye further teaches that particularly preferred

water proofing materials are paraffin emulsions (col.2, lines 3-7) and the preferred water retention agent is a PAO of molecular weight from 100,000 – 8,000,000 and it is preferred that it is pure poly(ethylene oxide) (col.2, lines 36-44).

Melbye further teaches the composition comprising a plasticizer or superplasticizer selected from a range of material of which styrene-maleic anhydride derived copolymers in free acid or salt form and having monomeric units including polysiloxanes are most preferred (col.2, line 50-col.3, line 42).

Since the values of x, y and z ranges from 1 to 100 and the values of $m+n = 15$ to 100 in the formula of the polysiloxanes of Melbye, the taught formula encompasses several derivatives of the polysiloxanes in different state of matter, including the liquid state.

Regarding **claim 8**, modified Melbye further teaches that it is preferable to use an anionically-emulsified paraffin mixture (fusion point of 45°C – 51°C) with a particle size of less than 2 microns.

Regarding **claims 9 and 10**, modified Melbye further teaches adding the admixture of the invention to cementitious composition to confer considerable property advantages on the compositions (col.1, lines 31-39).

Regarding **claim 14**, modified Melbye further teaches using the plasticizer or superplasticizer in the proportion of from 0.01 to 10% by weight based on the weight of the cement.

Regarding **claims 15-16**, modified Melbye further teaches the use of 0.01 parts of microsilica based on 100 parts of the composition (see 22 parts microsilica, col.5, line 44).

Regarding **claim 18**, modified Melbye further teaches the composition comprising of accelerators (col.5, lines 26-30).

5. **Claim 17** is rejected under 35 U.S.C. 102(b) as being anticipated by Melbye (EP 0641746), the US patent (US 5,674,929) is used for ease of citation; as applied to claim 1 above, as evidenced by Yoshida et al (EP 1093843).

Regarding **claim 17**, modified Melbye further teaches the composition comprising beta-naphthalene sulfonate-formaldehyde condensate (BNS) (col.5, lines 9-10).

Naphthalene sulfonate formaldehyde condensates are known anionic surfactants in the art as evidenced by Yoshida et al [0019, line 1-0020, line 5].

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. **Claims 2-5, 11-13 and 19-20** are rejected under 35 U.S.C. 103(a) as being unpatentable over Melbye (EP 0641746), the US patent (US 5,674,929) is used for ease of citation, as applied to claims 1 and 10 above, in view of Bell (EP 0200471), in further view of applicant's own admission found on page 4, lines 10-15 of the present specification.

Regarding **claims 2-5, 11-13 and 19-20**, Melbye et al teaches all the claim limitations as set forth above. Melbye does not teach the composition comprising a fluid blend of the siloxane compound of the instant claim.

Bell et al teaches that during agitation to prepare concrete mixture, an excessive degree of foaming can occur which can introduce an excessive amount of air into the concrete mixture which can detract from the strength of the hardened concrete (page 10, line 25 - page 11, line 5) , Bell et al further teaches the use of antifoaming agents including polysiloxanes to rectify this problem (page 15, lines 25-28).

One of ordinary skill in the art would have incorporated polysiloxane antifoaming agent into the composition of Melbye based on the advantage as taught by Bell et al.

Though modified Melbye does not teach the polysiloxanes of the instant claim, the applicant admits that these siloxanes are known antifoam in the art (Specification, page 4, lines 10-15); hence, the incorporation of the claimed siloxanes into the composition of Melbye is nothing more than the use of a known element for its intended use in a known environment in order to achieve entirely expected result

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to OLATUNDE S. OJURONGBE whose telephone number is (571)270-3876. The examiner can normally be reached on Monday-Thursday, 7.15am-4.45pm, EST time, Alt Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571)272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

O.S.O.

/Randy Gulakowski/
Supervisory Patent Examiner, Art Unit 1796